

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1995.

Richard J. Seibel,  
Regional Director, Western Regional  
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 906—COLORADO**

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (s) to read as follows:

**§ 906.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(s) With the exception of Rule 1.04(111), concerning the exemption for public roads in the definition of "road," revisions to the following rules, as submitted to OSM on June 12, 1995, and as supplemented with explanatory information on September 26, 1995, are approved effective December 14, 1995: Definition of "coal"—Rule 1.04(21), Definition of "operator"—Rule 1.04(80), Definition of "person"—Rule 1.04(92), Definition of "road"—Rule 1.04(111), Definition of "surface coal mining operations"—Rule 104(132), Applicability of the Colorado program—Rule 1.05.1(1)(b), Water quality sampling and laboratory analyses—Rule 2.03.3(4), Lands unsuitable for surface coal mining operations—Rule 2.03.7(1), Permit application information regarding the measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief

culvert for roads, conveyors, or rail systems within the permit area—Rule 2.05.3(3)(c)(iv),

Design of coal processing waste dams and embankments—Rule 2.05.3(8)(c),

Permit application contents of the fish and wildlife plan—Rule 2.05.6(2)(iii)(A),

Permit application contents for prime farmland—Rule 2.06.6(2),

The use of published research or testing to establish the salt tolerance threshold values for specific crop yields in order to assess material damage to the quality or quantity of surface or ground water systems that supply alluvial valley floors—Rules 2.06.8(5)(c)(i) (A) and (B),

Public participation and approval of permit applications—Rule 2.07.2,

Reductions in the required performance bond amount—Rule 3.02.2(5),

Bond liability period for lands with approved industrial or commercial, or residential post-mining land use—Rule 3.02.3(c),

Bond forms—Rule 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix),

Alternative bonding systems—Rule 3.02.4(1)(d),

Irrevocable letters of credit—Rule 3.02.4(d)(i),

Requirements for establishment of vegetation which must be demonstrated prior to phase ii bond release—Rule 3.03.1(2)(b),

Airblast limitations—Rule 4.08.6(1),

Mine support facilities and commercial or industrial postmining land use designations—Rule 4.15.10(3), as augmented by Colorado's April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose," and

Subsidence-caused damages—Rule 4.20.3(2).

3. Section 906.16 is amended by removing and reserving paragraph (g) and adding paragraph (h) to read as follows:

**§ 906.16 Required program amendments.**

\* \* \* \* \*

(h) By February 12, 1996, Colorado shall revise Rule 1.04(111), to delete the exemption for regulation of public roads under Colorado's program, or otherwise modify its program to qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

[FR Doc. 95-30331 Filed 12-13-95; 8:45 am]  
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**ASSASSINATION RECORDS REVIEW BOARD**

**36 CFR Part 1415**

**Rules Implementing the Privacy Act**

**AGENCY:** Assassination Records Review Board.

**ACTION:** Final rulemaking.

**SUMMARY:** This part contains the regulations of the Assassination Records Review Board (Review Board) implementing the Privacy Act of 1974. The regulations inform the public that the Review Board is responsible for carrying out the provisions of the Privacy Act and for issuing internal Review Board orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the Review Board and that are retrieved by an individual's name or personal identifier. Elsewhere in today's Federal Register appears a notice describing the Review Board's systems of records.

**EFFECTIVE DATE:** This regulation is effective January 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3(f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

**Notice and Comment Process**

The Review Board received no public comments in response to its Notice of Proposed Rulemaking. The staff, in consultation with the Office of Management and Budget, proposed some technical amendments to the regulations. The following changes have been incorporated into the final rule:

Privacy Act queries will be processed by a new Privacy Act Officer rather than by the General Counsel. See §§ 1415.10, 1415.15, 1415.20, and 1415.25.

The term *person* has been replaced throughout by the term *individual* in order to clarify that corporations and other artificial persons are not covered by the Privacy Act regulations.

The definition of system of records in § 1415.10 has been revised to clarify that assassination records coming into the Review Board's temporary possession during its review are not subject to the Privacy Act.

The procedures for the handling of Privacy Act requests has been modified in § 1415.25(b) to extend somewhat the timing of the Review Board's response. The Privacy Act Officer is now allotted ten (rather than five) days to respond to a request and is also given some latitude for an additional extension of time if one proves warranted. Similarly, the allotted time for the Executive Director's response to an appeal is thirty (rather than twenty) days in § 1415.30. The final rules also provide, in § 1415.35, more specific guidance for amending or correcting errors that may appear in records.

Section 1415.55 has been rewritten to provide more specific guidance on the exemptions applicable to the Review Board's various systems of records.

#### Paperwork Reduction Act Statement

The rule is not subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* (amended 1995), because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

#### Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-12, the Review Board certifies that this rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

#### Review by OMB

The Office of Management and Budget has reviewed the regulation under Executive Order 12866.

#### List of Subjects in 36 CFR Part 1415

Privacy Act.

#### The Final Regulations

The Review Board amends chapter XIV in title 36 of the Code of Federal Regulations by adding a new part 1415 to read as follows:

### PART 1415—RULES IMPLEMENTING THE PRIVACY ACT

Sec.

- 1415.5 Scope.
- 1415.10 Definitions.
- 1415.15 Systems of records notification.
- 1415.20 Requests by individuals for access to their own records.
- 1415.25 Processing of requests.
- 1415.30 Appeals from access denials.
- 1415.35 Requests for amendment of records.
- 1415.40 Appeals from amendment of denials.
- 1415.45 Disclosure of records to third parties.
- 1415.50 Fees.
- 1415.55 Exemptions.

Authority: 5 U.S.C. 552a; 44 U.S.C. 2107.

#### § 1415.5 Scope.

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

#### § 1415.10 Definitions.

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

*Assassination records*, for the purpose of this regulation only, are records created by Government offices (other than the Review Board), entities, and individuals that relate to the assassination of President John F. Kennedy that may, from time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

*Executive Director* means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

*JFK Act* means the President John F. Kennedy Records Collection Act of 1992.

*Privacy Act Officer* means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part.

*Review Board* means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

*System of records* means a group of records that is within the possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Assassination records, as defined above, are not included in the Review Board's systems of records.

#### § 1415.15 Systems of records notification.

Any individual who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to

the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, Washington, DC 20530, and should be clearly marked "Privacy Act Request."

#### § 1415.20 Requests by an individual for access to their own records.

(a) *Requests in writing.* An individual may request access to his or her own records in writing by addressing a letter to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, 2nd Floor, Washington, DC 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester;

(2) Proof of identification, which should be a copy of one of the following: Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) *Requests in person.* Any individual may examine his or her own record on the Review Board's premises. To do so, the individual should call the Review Board's offices at (202) 724-0088 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

#### § 1415.25 Processing of requests.

(a) The Privacy Act Officer will process all requests under both the Freedom of Information Act and the Privacy Act.

(b) The Privacy Act Officer will respond to the request within ten working days of its receipt by the Privacy Act Officer. If the Review Board needs additional time to respond, the Privacy Act Officer will provide the requester an explanation as to why the Review Board requires an extension.

(c) Following the initial call from the requester, the Privacy Act Officer will determine: whether the records identified by the requester exist, and whether they are subject to any exemption under § 1415.55 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. At the appointment, the requester will

be asked to present identification as stated in § 1415.20(a)(2). The requester may be accompanied by one individual of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. In the event that a second individual accompanies the requester, the requester will be asked to provide the Review Board with written consent to disclose his or her records to the second individual.

(d) If a request is received for information compiled in reasonable anticipation of a civil action or proceeding, the Privacy Act Officer will determine whether to disclose the information and will inform the requester whether this information is subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

#### § 1415.30 Appeals from access denials.

When access to records has been denied in whole or in part by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify those denied records that are still sought and state why the denial by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days after the appeal letter is received in the Review Board's offices, unless, for good cause shown, the Executive Director extends such thirty day period. The appeal determination will explain the basis for continuing to deny access to any requested records and will notify the requester of his or her right to judicial review of the Executive Director's determination.

#### § 1415.35 Requests for amendment of records.

(a) *Amendment requests.* Any person is entitled to request amendment of a record pertaining to him or her. This request must be made in writing and should be addressed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The letter should clearly identify the amendments desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* The Privacy Act Officer will acknowledge the request for amendment within ten working days of receipt of the request. The Privacy Act Officer will provide a letter to the requester within thirty working days stating whether or not the request for amendment has been granted or denied.

The Privacy Act Officer will amend information that is not accurate, relevant, timely, or complete, unless the record is excluded or exempt. If the Privacy Act Officer decides to deny any portion of the amendment request, the reasons for the denial will be provided to the requester. In addition, the Privacy Act Officer will inform the requester of his or her right to appeal the Privacy Act Officer's determination to the Executive Director.

#### § 1415.40 Appeals from amendment of denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will:

- (1) Explain the basis for denying amendment of the specified records;
- (2) Inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and
- (3) Inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

#### § 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

- (a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOIA regulations, 36 CFR part 1410;
- (b) Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; or
- (c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

#### § 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for amendment of records. When a request is made for copies of records, a copying

fee will be charged at the same rate established for FOIA requests. See 36 CFR 1410.35. However, the first 100 pages will be free of charge.

#### § 1415.55 Exemptions.

(a) The systems of records entitled "Personal Security Files" and "Subject File" contain some information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(1) of the Privacy Act, 5 U.S.C. 552a(k)(1), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). Disclosure of information properly classified pursuant to an Executive Order would jeopardize the national defense or foreign policy of the United States.

(b) The systems of records entitled "Agency Contacts," "Investigations," "Public Contacts," and "Subject File" consist, in part, of investigatory material compiled by the Review Board for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of the agency's accounting of certain disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and

other evasive actions that could impede or compromise the investigation.

(2) From subsection (d) because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsections (d)(2), (3), and (4) because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the Review Board continuously to retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation.

(5) From subsection (e)(4)(G) and (H), because the Review Board is claiming an exemption for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(6) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to the person dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct of a pending or future investigation. In addition, mere notice of an investigation could inform the subject or others that their activities either are, or may become, the subject of an investigation and might enable the subjects to avoid detection or to destroy assassination records. Since the Review Board is claiming an exemption for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(c) The systems of records entitled "Employment Applications" and

"Personal Security Files" consist in part of investigatory material compiled by the Review Board for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are eligible for exemption from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: December 8, 1995.

David G. Marwell,

*Executive Director, Assassination Records Review Board.*

[FR Doc. 95-30384 Filed 12-13-95; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 10

[Docket No. 9511277-5277-01]

RIN 0651-AA65

#### Cross-Appeals in Patent and Trademark Office Disciplinary Proceedings

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Patent and Trademark Office (PTO) is amending a rule of practice in disciplinary cases to provide a time period for filing a cross-appeal to the Commissioner of Patents and Trademarks after the initial decision of the Administrative Law Judge (ALJ). This amendment will simplify the appeals practice in disciplinary cases by eliminating the need to file contingent appeals.

**EFFECTIVE DATE:** January 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Bovard, 703-308-5316.

**SUPPLEMENTARY INFORMATION:** The PTO issued a second notice of proposed rulemaking to amend a rule of practice

in practitioner disciplinary proceedings. 60 FR 4395, Jan. 23, 1995. Under the existing practice, after the ALJ's initial decision, a party (either the respondent or the Director of the Office of Enrollment and Discipline) might be obliged to file a contingent appeal to protect cross-appealable issues in the event the opposing party filed an appeal. The amended rule provides a time period for the party to file a cross-appeal after the opposing party has appealed to the Commissioner from the ALJ's initial decision.

No comment to the second notice of proposed rulemaking was received. The proposed rule is adopted.

#### Other Considerations

This rule change conforms with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12612 and 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule change will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of the rule change is to provide a time period to file a cross-appeal in a PTO disciplinary proceeding. See the first notice of proposed rulemaking. 58 FR at 38996.

The PTO has determined that the rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612. The rule change is not significant for the purposes of Executive Order 12866.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no recordkeeping or reporting requirements within the coverage of the Act are placed upon the public.

#### List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

Pursuant to the authority contained in 35 U.S.C. 6, the PTO amends 37 CFR part 10 as follows:

#### PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR part 10 continues to read as follows: